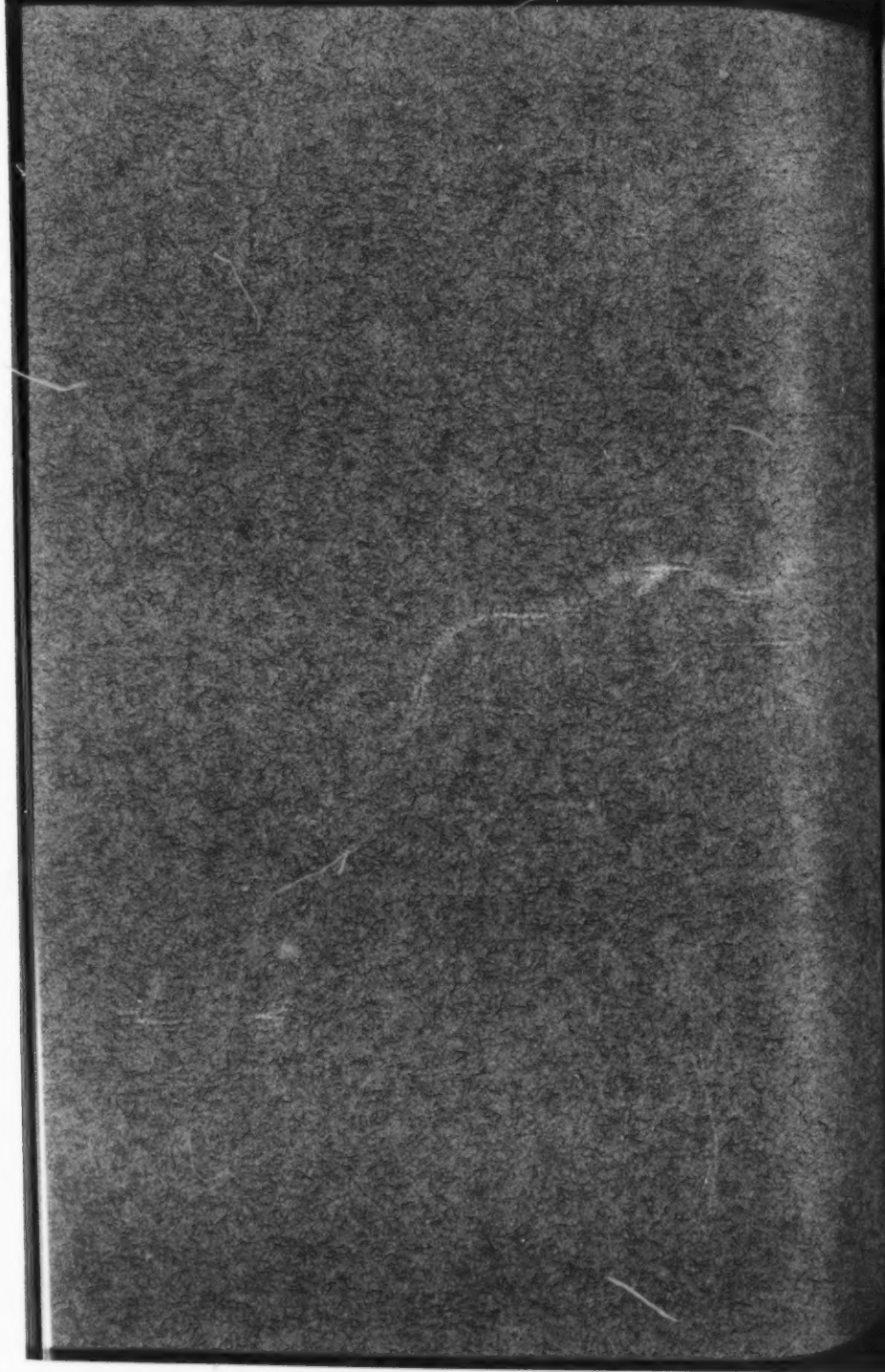


In the

OF PETITION  
STATES  
CIRCUIT

FROM



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(1)



# In the Supreme Court of the United States

OCTOBER TERM, 1943

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No. 889

LENORE S. ROBINETTE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH  
CIRCUIT*

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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## OPINIONS BELOW

The findings of fact and opinion of the Board of Tax Appeals (R. 31-39) (now the Tax Court of the United States) are reported in 46 B. T. A. 1138 and the opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 65-69) is reported in 139 F. 2d 285.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 8, 1943. (R. 63.) A petition for rehearing was denied January 24, 1944. (R. 77.) The petition for a writ of certiorari

was filed April 14, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTIONS PRESENTED

1. Whether, as a citizen of the United States, the petitioner's decedent, Charles C. Cohn, was liable to the federal income tax during the taxable year 1918 under Section 210 of the Revenue Act of 1918, even though during that year he resided in the Philippine Islands, derived all of his income from sources within the Islands, and paid a tax thereon to the Philippine Government.
2. Whether the decedent's liability is barred by Section 250 (d) of the Revenue Act of 1921 and cognate provisions of subsequent Acts.
3. Whether the petitioner was liable for interest on the deficiency from July 1, 1939, under Section 813 of the Revenue Act of 1938.

#### STATUTES AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra*.

#### STATEMENT

The petitioner is the transferee of the transferee of the assets of one Charles C. Cohn, deceased. (R. 31.) The Commissioner determined that she was liable as such transferee to pay income and excess profits tax deficiencies due from the decedent in his lifetime as follows (R. 32):

Year:	<i>Income tax</i>	<i>Excess Profits tax</i>
1917-----	\$1,408.83	\$1,389.01
1918-----	27,914.38	-----

The decedent was a citizen of the United States who resided at Manila, Philippine Islands, from 1903 to 1919. He returned to the United States in 1919 and changed his name to Cole. His income in 1917 and 1918 was principally derived from the practice of law at Manila. He filed income tax returns with the Philippine Collector of Internal Revenue at Manila for the taxable years 1917 and 1918 under the Revenue Act of 1916, as amended by the War Revenue Act of 1917, but none in the United States. At his death in 1931, assets having a value in excess of \$30,712.22 were distributed to his son. Upon the latter's death in 1935, assets valued in excess of \$30,712.22 were distributed to his widow, the petitioner here. (R. 32-33.)

The Board of Tax Appeals (now the Tax Court of the United States) held that the decedent was not liable to the United States for the federal income tax in the taxable year 1917 under the Revenue Act of 1916, as amended, but was liable for the excess profits tax in that year under the Revenue Act of 1917, although only in respect of a portion of the income he had derived from sources within the Islands. The Board also held that the decedent was liable for the income tax for the taxable year 1918 under the Revenue Act



of 1918. (R. 34-40.) Thereupon, the Tax Court expunged the income tax deficiency which the Commissioner had determined against the petitioner as such transferee for the year 1917, as also the excess profits tax deficiency, except \$3.21 thereof, but redetermined the petitioner's income tax liability as such transferee for the year 1918 in the sum of \$27,914.38, which is the amount of the Commissioner's determination, together with interest thereon from July 1, 1939. (R. 45.) The court below affirmed the decision of the Tax Court (R. 63), and thereafter denied a petition for rehearing (R. 77).

#### ARGUMENT

We submit that the decision below is correct and that there is no occasion for further review.

1. The theory of the petition is that a citizen of the United States who resided during 1918 in the Philippine Islands, and who derived all of his income from sources within the Philippine Islands, and was taxed there upon his income for the benefit of the Islands, was not subject, in addition, to the tax imposed upon the income "of every individual" by Section 210 of the Revenue Act of 1918 (Appendix, *infra*). That theory has been consistently rejected. *Lawrence v. Wardell*, 273 Fed. 405 (C. C. A. 9th); *Cotterman v. United States*, 62 C. Cls. 415, certiorari denied, 273 U. S. 732; *Helvering v. Campbell*, 139 F. 2d 865 (C. C. A. 4th). There is no decision to the contrary.

It was clearly the intention of Congress to provide a separate income tax for the Philippine Islands and to appropriate the revenues to the governmental administration of the Islands. Sections 261 and 1400 (b), Revenue Act of 1918 (Appendix, *infra*). It is equally clear that Congress did not intend to relieve a citizen of the United States from the payment of his share of the revenues needed by the Federal Government, merely because he was liable to the tax imposed for the benefit of the Philippine Islands. The broad reach of Section 210 is emphasized by the fact that, in order to afford a degree of relief to citizens of the Philippine Islands who were not otherwise citizens of the United States, Congress thought it necessary to make specific provision in Section 260 of the Revenue Act of 1918 (Appendix, *infra*). That an ordinary citizen is taxable despite his payment of taxes to the Philippine Islands is further clearly indicated by the fact that he is allowed a credit for the Philippine Islands tax by Section 222 (a) (1) of the Revenue Act of 1918 (Appendix, *infra*). See also Articles 1131, 1132 and 1133 of Treasury Regulations 45 (Appendix, *infra*).

2. The limitations question is based upon the erroneous premise that only one return was required and that it was properly filed. Where, as here, two taxes are imposed and two returns required, it is now settled that the filing of but

one return, addressed to but one of the liabilities, does not serve to avoid the default. *Commissioner v. Lane-Wells Co.*, No. 115, October 1943 Term, decided February 14, 1944.

Since no return was filed with respect to the tax here involved, collection may be made at any time. See Section 250 (d) of the Revenue Act of 1921 and cognate provisions of subsequent Acts (Appendix, *infra*).

3. Petitioner is in error in asserting that her liability as a transferee does not commence until the decision in the instant case becomes final. She became liable when the assets were transferred, leaving the tax unsatisfied. The statute to which petitioner resorted in initiating this proceeding in the Board of Tax Appeals "provides the United States with a new remedy for enforcing the *existing* 'liability at law or in equity' " [italics supplied]. *Phillips v. Commissioner*, 283 U. S. 589, 594. The existing liability included the tax and incidental interest. Since interest did not cease upon the taxpayer's death, that event has no bearing here.

Petitioner acquired the assets in 1936 (R. 33), but by reason of the provisions of Section 813 of the Revenue Act of 1938 (Appendix, *infra*), she is liable for interest only from July 1, 1939.

Whether the value of the assets received as transferee was sufficient to cover the interest is

not positively shown, but it was stipulated that petitioner received assets of a value in excess of the deficiency (R. 33). The court below held that this made a *prima facie* case under Section 1119 (a) of the Internal Revenue Code. There is no decision to the contrary.

CONCLUSION

For the reasons stated the petition for certiorari should be denied.

Respectfully submitted,

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*Special Assistants to the Attorney General.*

MAY, 1944.